

09 11.10.2023

Ct-08

ar

MAT 1439 of 2023

with
I.A No. CAN 1 of 2023

Shyam Kumar Shaw

Vs.

Dr. Sanghamitra Bandhyopadhyay & Ors.

Mr. Probal Mukherjee

Mr. Rajat Datta

... For the Appellant

Ms. Susmita Saha Dutta

... For the Indian
Statistical Institute

1. We have heard the learned counsel appearing for the parties.

2. The appellant has challenged show-cause notice culminated in Office Order dated 31st October, 2019 in which the Chief Executive Officer (Admn. & Finance), I.S.I at Baranagar, has imposed penalties as per the provision of 10.1(a) and 10.1(c) of the Standing Service Orders 1963. The appellant instead of preferring a statutory appeal a representation was made to the disciplinary authority for recalling or reconsideration of the order imposing punishment. It appears that the person to whom the letter was addressed is not the appellate authority. In fact, he is a disciplinary authority, who has imposed the punishment. The disciplinary authority refused to recall the imposition of punishment.

3. Learned counsel representing the I.S.I has submitted that there is a specific provision for appeal and in absence of an appeal the writ petition could not have been admitted. The writ petitioner proceeds on a mistaken plea that the disciplinary authority would be the appellate authority and being aggrieved by the decision of the disciplinary authority in refusing to recall the order of imposition of punishment the writ petition was filed. Ms. Saha Dutta has submitted that the Director, Indian Statistical Institute at Baranagar, is the appellate authority.

4. However, we find from the impugned order that the question of efficacious remedy was not raised and the learned Single Judge has proceeded on the basis that the disciplinary authority is the ultimate authority to decide the quantum of punishment. It also does not appear from the impugned order that it was ever brought to the notice of the learned Single Judge that the impugned order under challenge within the writ petition was, in fact, passed by the disciplinary authority and not by the appellate authority. In any event, having regard to the fact that we feel that the appellant may be given an opportunity to prefer a statutory appeal and the fact that the reasons for

which the learned Single Judge had refused to interfere with the order passed by the disciplinary authority are not reflected from the impugned order by which the disciplinary authority had refused to recall the order.

5. We set aside the order passed by the learned Single Judge by giving opportunity to the appellant to file a statutory appeal before the Director, Indian Statistical Institute at Baranagar. We request the Director to dispose of the appeal within a period of eight weeks from the date of filing of the appeal after giving an opportunity of hearing to the appellant and dispose of the appeal by passing a reasoned order without being influenced by the order dated 27th June, 2023, which shall be communicated to the appellant within one week thereafter.

6. We make it clear that we have not gone into the merits of the matter.

7. In view of the aforesaid, the appeal being MAT 1439 of 2023 stands disposed of.

8. In view of the disposal of the appeal, the application being CAN 1 of 2023 is accordingly disposed of.

9. However, there shall be no order as to costs.

10. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)